

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

LORI FITZGERALD, *et al.*,

Plaintiffs,

v.

JOSEPH WILDCAT SR., *in his official and individual capacities, et al.*,

Defendants.

Case No. 3:20-cv-00044-NKM-JCH

**PLAINTIFFS' UNOPPOSED MOTION
FOR LEAVE TO FILE AN AMENDED COMPLAINT**

Plaintiffs, by counsel, pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure and Local Civil Rule 11(c)(2), respectfully move for leave to file a Second Amended Complaint. Defendants do not oppose this motion. In further support of this motion, Plaintiffs state as follows:

1. On October 21, 2022, Plaintiffs filed an Amended Complaint. Dkt. 99. One of the central allegations in the Amended Complaint relates to an alleged servicing agreement between Defendants Skytrail Servicing Group, LLC, and a tribal entity, Ningodwaaswi, LLC d/b/a Sky Trail Cash. *See generally* Dkt. 99 at ¶¶ 16-27, 79, 101, 102.
2. At the time of the filing of the Amended Complaint, Plaintiffs did not have a copy of the alleged servicing agreement, which is not publicly available.
3. On December 21, 2022, Plaintiffs obtained a copy of the servicing agreement when Defendants William Pruett and Skytrail Servicing Group, LLC filed a Motion to Compel Arbitration. *See* Dkt. Nos. 125 & 127.
4. Because the document is central to Plaintiffs' theory of the case and Defendants have challenged the sufficiency of the allegations (*see, e.g.*, Dkt. 113 at pg. 17), Plaintiffs believe

that it is important to incorporate the actual document into an amended complaint—rather than relying on the allegations based upon information and belief.

5. Although Defendants do not agree with Plaintiffs' characterizations regarding the servicing agreement, they have nonetheless indicated that they do not oppose the relief requested in this motion.

6. Plaintiffs further submit that they were diligent in their request for leave to amend. After receipt of the document on December 21, 2022, Plaintiffs' counsel emailed on December 27, 2022, requesting their consent to this motion. Plaintiffs' counsel also provided a copy of the proposed amended complaint on December 28, 2022. Because all of these events occurred over the holidays, Defendants understandably did not provide their position until the day of this filing, January 3, 2023.

7. Under Rule 15(a)(2), a party “amend its pleading only with the opposing party's written consent or the court's leave.” *Lang v. Patients Out of Time*, 2022 WL 3656952, at *4 (W.D. Va. Aug. 24, 2022) (quoting Fed. R. Civ. P. 15(a)(2)). Because Defendants do not oppose the request, Plaintiffs submit that it is proper under Rule 15(a)(2). Further, Plaintiffs note that no scheduling order has been entered in the case and any delay caused by the amendment will be minimal.

8. If the Court grants the motion, Plaintiffs further request that the Court deny the outstanding motions (Dkt. Nos. 110, 112, 119, 123, 125) without prejudice as moot and set a deadline of January 25, 2023, for Defendants to file renewed motions.¹

¹ The parties agree that the arbitration motions filed by the Defendants are not mooted by the filing of the Second Amended Complaint. However, Plaintiffs believe that it is cleaner to simply restart the briefing based on the Second Amended Complaint, especially because Defendants Wildcat, Lorzeno, and Reynold's Motion to Compel Arbitration was filed concurrently with a motion to dismiss for lack of subject matter jurisdiction. See Dkt. 110. If the Court prefers otherwise, Plaintiffs are prepared to file their oppositions to the arbitration motions (Dkt. Nos. 110 & 125) by

9. For the foregoing reasons, Plaintiffs respectfully request the Court to enter the attached proposed order.

Respectfully submitted,
PLAINTIFFS

By: /s/ Kristi C. Kelly
Kristi Cahoon Kelly, VSB #72791
Andrew J. Guzzo, VSB #82170
KELLY GUZZO, PLC
3925 Chain Bridge Road, Suite 202
Fairfax, Virginia 22030
Telephone: (703) 424-7572
Facsimile: (703) 591-0167
Email: kkelly@kellyguzzo.com
Email: aguzzo@kellyguzzo.com
Counsel for Plaintiffs

January 9, 2023, which is the current deadline for the Plaintiffs' opposition to the Motion to Compel Arbitration filed by Defendants Wildcat, Lorzeno, and Reynolds.